

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: BPS DIRECT, LLC, AND	: MDL 3074
CABELA'S, LLC, WIRETAPPING	:
	:
	: E.D.Pa. ACTION NOS.:
	: 23-md-3074
	: 22-cv-4709
	: 23-cv-2282
	: 23-cv-2287
	: 23-cv-2293
	: 23-cv-2294
	: 23-cv-2295
	: 23-cv-2306
	: 23-cv-2338
	: 23-cv-4008

ORDER

AND NOW, this 23rd day of October 2023, upon considering the parties' positions during today's extended and long-scheduled status conference, explaining we coordinate discovery with the later transferred *Irvin v. Cabela's LLC, et al* (No. 23-4008) consistent with and previewed in our July 26, 2023 Order (ECF No. 52), counsel advising they reached an agreement to govern their treatment of limited confidential discovery without binding this Court but learning of some delay in setting depositions and producing documents inconsistent with our July 26, 2023 Order (ECF No. 52), and counsel agreeable and available to answer our questions on the pending Motions to dismiss (ECF Nos. 54 and 38 in No. 23-4008) later this week, it is **ORDERED:**

1. We decline to remand the *Irvin* matter at this early stage;
2. Discovery notices, responses, and productions shall be shared with lead counsel and Mr. Irvin's counsel consistent with the above caption;
3. Defendants shall produce all responsive documents due and owing for several weeks responsive to Mr. Irvin's discovery requests by no later than **November 6, 2023**;

4. We vacate the parties' prospective obligations under Judge Conner's July 14, 2023 Case Management Order and Standing Order (ECF Nos. 36, 37) in the *Irvin* matter (No. 23-530 [MDPa.]) until further Order as the parties in the *Irvin* matter must comply with our July 26, 2023 Order (ECF No. 52) other than Plaintiffs' counsel's leadership obligations under Paragraph 2(h);

5. The parties must continue meaningful efforts towards resolving this matter (or remanding the *Irvin* matter) consistent with our July 26, 2023 Order (ECF No. 52) including:

a. Plaintiffs shall, on or before **October 26, 2023**, produce all potential identifying information of each named Plaintiff to assist Defendants in producing requested discovery after Defendants today confirmed this information is owned by them whether held by them or held by session replay providers;

b. The parties shall continue engaging in meaningful good faith discussions with the aim of, on or before **November 7, 2023**, either reaching agreement as to a proportional production of responsive documents, including potential exemplars; or, move to compel overdue productions compliant with our Policies with fair notice Defendants must be able to describe why they cannot track the Plaintiffs' contacts with their websites to assist in this document production given the nature of the alleged tracking of browsing history or purchases through the challenged conduct;

c. Third parties may not unilaterally ignore discovery obligations including under subpoenas;

d. Lead Plaintiffs' counsel shall file a Notice, on or before **December 5, 2023**, the confirmed date, time, and place (including virtual testimony if possible) for the identified depositions of the Plaintiffs and those persons presently identified as witnesses affiliated with the Defendants subject to later amendments for good cause;

6. Counsel shall be prepared to address specific questions concerning the pending Motions to dismiss (ECF Nos. 54 and 38 in No. 23-4008) on **October 25, 2023 at 3:30 P.M.** not extending more than ninety minutes over ZoomGov (<https://www.zoomgov.com>, Meeting ID: 160 347 1000, Passcode: 485905);

7. We confirm Plaintiffs' counsels' leadership obligations (not including the *Irvin* counsel) include filing a sworn spreadsheet like their present spreadsheet (ECF No. 62-1) but, moving forward with their **December 18, 2023** filing, delineating the current and historical time separated between federal issues including jurisdiction and standing, particular state statutes plead in the Consolidated Complaint (ECF No. 53), or common law claims;

8. We will hold our second status conference on **December 21, 2023 at 8:30 A.M.** over our conference line (888-278-0296 / 5723096#) and again require Plaintiffs' counsel to file a proposed joint Agenda for our conference not exceeding five pages but concisely identifying (less than 100 words per issue) the respective positions on then-disputed issues by no later than **4:00 P.M. on December 19, 2023**; and,

9. All other obligations in our July 26, 2023 Order (ECF No. 52) remain in effect.



KEARNEY, J.